



Remarks

The response to the election requirement filed December 9, 2003 was received and the requirement was withdrawn. Subsequently, claims 1-21, as originally presented, remain in this pending application.

Before considering the rejections in detail, the fundamental concepts of the present invention will be briefly reviewed. The present invention is directed to a dry powder cubic gel precursor comprising an encapsulating compound, an amphiphile capable of forming a cubic liquid crystalline phase, and optionally a solvent. The encapsulating compound (A), amphiphile (B), and optional solvent (C) are present in mass fractions relative to each other such that  $1.0 = a + b + c$  wherein  $a$  is the mass fraction of A,  $b$  is the mass fraction of B, and  $c$  is the mass fraction of C. Further,  $1.0 > a > 0$ ,  $1.0 > b > 0$ ,  $1.0 > c > 0$  and  $a$ ,  $b$ , and  $c$  do not fall within a cubic liquid crystalline phase region on a phase diagram representing phase behavior of A, B, and C.

**Objection to claims 18-21**

Claims 18-21 were objected to as being dependent upon a rejected base claim (claim 1). However, a terminal disclaimer has been filed along with this response in order to overcome the rejection of claims 1-17. Accordingly, the objection to claims 18-21 is now moot.

**Rejection Under 35 U.S.C. §112, second paragraph**

The Examiner has rejected claim 8 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Specifically, the Examiner states that the specification cites to USP 5,756,108 (col. 1, lines 64-68) for reference to the chemical “phytangtriol.” However, in the pending application, reference is made to both 3,7,11,15-tetramethyl-1,2,3-hexanetriol and phytantriol (no “e” in this spelling). The common chemical name for this substance is “phytantriol” which is synonymous with 3,7,11,15-tetramethyl-1,2,3-hexadecanetriol, as they share the common CAS registry number ([074563-64-7]; see Aldrich catalogue, 2003-4, p. 1475 and p.1757). The chemical “phytanetriol” as it appears in the ‘108 patent is also referenced as 3,7,11,15-tetramethyl-1,2,3-hexanetriol. Apparently this is a different spelling for the same substance. Nevertheless, the CAS registry number applies to 3,7,11,15-tetramethyl-1,2,3-hexadecanetriol (which is the substance referenced in the ‘018 patent) or phytantriol, which is the spelling used by CAS. In addition, in the pending application, parentheses are omitted for the common chemical name “phytantriol.” As such, claim 8 and paragraph 078 of the specification have been amended to include parentheses around the term “phytantriol.” No new matter is introduced as a result of these amendments.

### **Nonstatutory Double Patenting Rejection**

Claims 1-17 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of co-pending application 10/075,551. In order to overcome this rejection, Applicants hereby submit a terminal disclaimer in compliance with 37 C.F.R. 1.321(c).

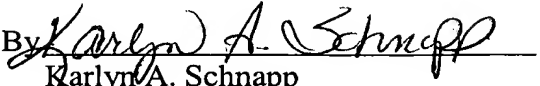
In summary, the Examiner’s rejections under 35 U.S.C. §112, second paragraph, have been overcome and should be withdrawn. The filing of the terminal disclaimer overcomes the obviousness-type double patenting/rejection of claims 1-17. Accordingly, the present

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application is in form for allowance and early reconsideration and allowance of the claims, as currently pending, are earnestly solicited.

Respectfully submitted,

PATRICK SPICER et al.

By   
Karlyn A. Schnapp  
Registration No. 45,558  
Attorney for Applicants

FROST BROWN TODD LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 651-6865

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